

Message

From: Keigwin, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=151BAABB6A2246A3A312F12A706C0A05-RICHARD P KEIGWIN JR]
Sent: 11/6/2020 7:10:15 PM
To: Dennis, Allison [Dennis.Allison@epa.gov]
Subject: RE: For Rick Review: Progressive Farmer; 24c; DDL Flx

Let's find another time to chat. I was in the Teams room for about 10 minutes. I'm guessing something came up on your end?

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Friday, November 06, 2020 12:09 PM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>
Subject: RE: For Rick Review: Progressive Farmer; 24c; DDL Flx

I put some time on your calendar today.

Michele Knorr and Scott Garrison

From: Keigwin, Richard <Keigwin.Richard@epa.gov>
Sent: Friday, November 6, 2020 8:15 AM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Subject: RE: For Rick Review: Progressive Farmer; 24c; DDL Flx

So, I think there are some nuances that we need to be aware of before we send a follow-up response. Do you know who in OGC reviewed the draft responses? It might be helpful to have a discussion.

From: Dennis, Allison <Dennis.Allison@epa.gov>
Sent: Thursday, November 05, 2020 12:24 PM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>
Subject: For Rick Review: Progressive Farmer; 24c; DDL Flx

Progressive Farmer wasn't satisfied with the response we provided to her 24c questions (pasted directly below for reference.) She pushed for us to give her more specific responses to her questions. After conferring with OGC this is the additional responses OPP is comfortable providing to this reporter (see below as well). Do you concur with providing this to the reporter? One thought from me- if we are breaking policy news (which I'm not sure if we are), then I need to flag this fact to OPA as I'm not sure if this is the forum for doing so (vs. a blog, PR, speech, etc.). After I hear from you, I'll run this by Alex too. Thanks! -Allison

1. Does the Tuesday dicamba registration decision and announcement re: FIFRA Section 24(c) mark an official change in EPA's position on states' use of Section 24(c)? And if so, has EPA decided to skip the public comment period it committed to on this topic in the spring of 2019?
2. Will this stance on 24c (no state restrictions, only expansions) be applied by EPA uniformly to all future state SLN labels on all pesticides, beyond dicamba?
3. Has EPA's position on this been prompted or influenced by the EPA's Inspector General investigation into states' use of Section 24(c)?
4. Via AAPCO, state regulators have directly petitioned EPA not to take this stance on Section 24(c), which will greatly limit states' ability to react quickly to new dicamba labels, given the cumbersome and time-consuming process of state rulemaking permitted via 24(a). Did EPA consult with state regulators or inform them of this new stance (no restrictions via 24 (c)) before the dicamba decision? Because the state regulators I have spoken to seem taken completely off guard by this announcement by their federal co-regulators.

Ex. 5 Deliberative Process (DP)

From: Hackel, Angela <Hackel.Angela@epa.gov>

Sent: Wednesday, November 4, 2020 9:16 AM

To: Dennis, Allison <Dennis.Allison@epa.gov>; OPP FEAD CSB <OPP_FEAD_CSB@epa.gov>

Subject: FW: Dicamba decision questions

Hello,

Please see her follow up email below. I have explained that for attribution that she should use according to the EPA. Please let me know if there is anything that you would like to provide, in regard to her follow up email.

Also, Ken is out today. I will be backing him up. Please send me any responses that are ready to be moved forward.

Thanks,

Angela

From: Emily Unglesbee <Emily.Unglesbee@dtm.com>
Sent: Wednesday, November 4, 2020 9:11 AM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Press <Press@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>
Subject: RE: Dicamba decision questions

This does not answer any of my questions, Angela. Can EPA officials give me any on-the-record responses to my actual questions or not? What happened to the public comment period on EPA's 24(c) interpretation specifically promised by Rick Keigwin to state regulators via AAPCO last spring?

I'm also not sure what you mean by "on background" since the paragraph you provide is publicly known information that EPA has stated on the record in its Memorandum of Support for the dicamba registrations. So I will be quoting this, unless you can prove that this is not something EPA is able to state on the record.

Emily Unglesbee
DTN Staff Reporter

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Tuesday, November 3, 2020 6:27 PM
To: Emily Unglesbee <Emily.Unglesbee@dtm.com>
Cc: Press <Press@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>
Subject: RE: Dicamba decision questions

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Emily,

Thank you for your patience. Please see our response to your inquiry below.

On background

FIFRA section 24(a) allows a state to regulate pesticides more restrictively than EPA under the state's own authority. However, some of the states that have imposed cut-off dates on dicamba uses have done so under section 24(c). Section 24(c) only authorizes states to issue registrations for additional uses of federal registrations to meet special local needs. Moving forward, if states wish to impose further restrictions on the dicamba products, or any other federally registered pesticides, they should consult with EPA and consider doing so under section 24(a) of FIFRA.

Thanks,

Angela

From: Emily Unglesbee <Emily.Unglesbee@dtm.com>
Sent: Wednesday, October 28, 2020 8:29 AM
To: Press <Press@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>
Subject: Dicamba decision questions

I have some questions for EPA on what the Tuesday dicamba announcement by Administrator Andrew Wheeler and Assistant Administrator for OCSPP, Alexandra Dunn mean for state regulation of dicamba going forward.

On the press call yesterday, Dunn stated that any future restrictions by states of the federal label would be required to work via Section 24(a) of FIFRA, which means they would involve rulemaking legislative processes by individual states. She said that Section 24(c) would only be used for proposed expansions of the federal label by states. This stance is reiterated in the EPA's Memorandum on the dicamba decision: "FIFRA section 24(a) allows a state to regulate pesticides more restrictively than EPA under the state's own authority. However, some of the states that have imposed cut-off dates on dicamba uses have done so under section 24(c). Section 24(c) only authorizes states to issue registrations for additional uses of federal registrations to meet special local needs; if states wish to impose further restrictions on the dicamba products, or any other federally registered pesticides, they should do so under section 24(a) of FIFRA."

This is a change in EPA's past interpretation of Section 24(c), which is something EPA has suggested it might do in the past, as stated in this spring 2019 statement: "Because section 24(a) allows states to regulate the use of any federally registered pesticide, and some states have instead used 24(c) to implement cut-off dates (and/or impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) registrations and the circumstances under which it will exercise its authority to disapprove those registrations." Source: <https://www.epa.gov/pesticide-registration/guidance-fifra-24c-registrations>.

However, that EPA statement added this: "Before making any changes in this regard, EPA intends to take public comment on any potential new approaches before adopting them."

So here are my questions:

1. Does the Tuesday dicamba registration decision and announcement re: FIFRA Section 24(c) mark an official change in EPA's position on states' use of Section 24(c)? And if so, has EPA decided to skip the public comment period it committed to on this topic in the spring of 2019?
2. Will this stance on 24c (no state restrictions, only expansions) be applied by EPA uniformly to all future state SLN labels on all pesticides, beyond dicamba?
3. Has EPA's position on this been prompted or influenced by the EPA's Inspector General investigation into states' use of Section 24(c)?
4. Via AAPCO, state regulators have directly petitioned EPA not to take this stance on Section 24(c), which will greatly limit states' ability to react quickly to new dicamba labels, given the cumbersome and time-consuming process of state rulemaking permitted via 24(a). Did EPA consult with state regulators or inform them of this new stance (no restrictions via 24 (c)) before the dicamba decision? Because the state regulators I have spoken to seem taken completely off guard by this announcement by their federal co-regulators.

Emily Unglesbee
Staff Reporter, DTN

DTN/Progressive Farmer
Phone: (402)-637-3295

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